

LAND DISPUTES AND DEVELOPMENT IN SRI LANKA – IMPLICATIONS OF THE VESTIGES OF CROWN LAND

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ACRONYMS

BOI	Board of Investment
DS	Divisional Secretary
FDO	Forest Department Officers
GA	Government Agent
LAC	Legal Aid Commission
LDO	Land Development Ordinance
LRC	Land Reform Commission
LST	Law and Society Trust
MOL	Ministry of Lands
RDA	Road Development Authority
UDA	Urban Development Authority
UK	United Kingdom
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

Significant land issues related to conflicts between government and community land use were identified in the Eastern and Sabaragamuwa provinces through research by the Law and Society Trust (LST) and from legal aid requests brought to field offices of the Legal Aid Commission of Sri Lanka (LAC). Demarcation of forest lands, acquisition of lands by the Mahaweli authority, and private land grabs after displacement from conflict have been a constant threat to residents of the Eastern province. In Sabaragamuwa province, information gathered at the International Forestry and Environmental Symposiums conducted by Sabaragamuwa University identified several issues related to government land use that prevent sustainable development of land and land underutilization and misuse.

Despite the prevalence of these issues and the volume of land-related legal aid requests received by local LAC offices, there has been no systematic documentation of these issues, and LAC offices do not feel equipped to do the field research and conduct local advocacy to resolve the disputes. In this context, a research and advocacy team was created within the LAC, led by Professor N. Selvakkumaran to focus exclusively on documenting and supporting the resolution of land disputes in the Eastern and Sabaragamuwa provinces. Working closely with the local LAC offices for eight months, the research team conducted village focus groups, meetings with regional authorities, and provincial-level advocacy forums to amicably resolve the disputes. The team identified many disputes that resulted from the misapplication of national policies or that are symptomatic of larger institutional or policy issues at the national level. Many of the issues are likely present in other provinces. The authors produced this report of findings, which was presented for discussion at the National Land Disputes Forum on October 24, 2016. This national forum was the culmination of the provincial advocacy campaigns and identified and discussed overarching and national-level land disputes with key institutions.

Based on the research and analysis from this activity, the report details specific land disputes in the targeted areas, affecting thousands of families, as well as efforts toward their effective resolution. Six cases are from Batticaloa District and eleven cases from Trincomalee in the Eastern Province. In the Sabaragamuwa Province, Embilipitiya District had five land cases and Ratnapura ten cases. Approximately 6,350 families have been affected by these cases, with most experiencing loss to livelihood and home. These case studies are potentially emblematic of many other disputes throughout the country. The case studies are contained in Appendices A and B. Appendix C contains two tables giving the number of families affected by these issues and the extent of land involved in these disputes.

The report also provides recommendations, based on the findings of these case studies and the project activities, to move toward a more productive national land policy and process. Some of the recommendations include a review and revision of land laws, implementation of the Land Reform Commission (LRC), and reducing the number of ministries and agencies engaged in managing land issues.

I. INTRODUCTION

Land in Sri Lanka is a tangible and valuable, but scarce, resource. As the population grows, land becomes scarcer, leaving many without a means to a livelihood. Land is needed for numerous purposes, from economic sustenance to economic prosperity, from cultural identity to ethnic security, from national development to national security, etc. As such, issues relating to land — ownership, rights, and interests — are bound to arise, and conflicts over competing interests are inevitable. Ideally, in a system that upholds the rule of law these disputes can be managed and resolved fairly and justly. Land is needed for individuals, families, and communities; at the same time, it is also needed by the government and its institutions. The government needs land to discharge its duties to the people, not only in the present but also for the future. The government needs to ensure that land use is sustainable for the well-being of the present generation as well as for future generations.

This report is based on an eight-month field program and study by the LAC, conducted with the support of Professor Selvakkumaran and USAID Chief of Party Tiernan Mennen, on land issues that are causing injustice to primarily poor populations in two provinces of Sri Lanka. The need for this study was identified when the LAC noted that significant numbers of land issues were being reported in the Eastern and Sabaragamuwa Provinces and found there was no systematic collation of land-related issues affecting the public, nor any advocacy strategy to resolve these issues. Most of the disputes that were received related to complex policy and institutional disputes between the government and community members, as opposed to disputes between individuals or neighbors.

Recognizing that the disputes not only affect the sustainable development of these lands for the long-term benefit of the people of the country, but also pose a threat to the security and livelihood of those who are directly affected by these issues, the LAC decided to conduct this program. Further, as this report notes, the problems of unresolved disputes, an inefficient legal system, and government mismanagement have the potential to cause conflicts between and within communities, thus undermining the country's efforts to achieve peace and reconciliation in the aftermath of the civil war.

The field study by the LAC Legal Officers covered the areas of Batticaloa and Trincomalee in the Eastern Province and Embilipitiya and Ratnapura in the Sabaragamuwa Province. The LAC activities for this project included initial field visits, focus group discussions, follow-up visits, advocacy visits, advocacy forums at the provincial level, and the National Level Advocacy Forum. The research team developed recommendations for remedial steps that can be taken to address these issues. This exercise thus also served to inform the necessary stakeholders about changes or amendments in policy, legislative and administrative rules, and practices and lessons learned that could be applied in other regions. The information gathered also provides data for governmental agencies and individuals in resolving similar conflicts and issues prevalent in other parts of the country.

II. OVERVIEW AND FINDINGS

The total land area of Sri Lanka is 65,610 square kilometers, including an inland water area of around 2,905 square kilometers. Of this land area, only 18% is privately owned land and the balance, 82%, belongs to the State. Before Sri Lanka (then Ceylon) gained independence from the United Kingdom (UK), it was known as the Crown land and was supposed to have belonged to the Crown in the UK.¹

When countries are under the rule of foreign powers, those powers often try to take full control of all land that is not owned and occupied by private individuals. Sri Lanka was no exception to this practice, and many laws were enacted under foreign rule by those occupying our country. Some of those laws are still in operation even though those rulers, who had different objectives, left the shores almost 70 years ago.

In Sri Lanka, the thrust of the land-related laws, which mostly originated under colonial rule, is that the State has dominion over all land to the exclusion of all others, unless a person could show ‘title’ either through a title document or through continuous and uninterrupted occupation of thirty years. In practice this equates to a State ‘monopoly’ over lands in the country.²

The land reform laws of 1972 and 1975 placed a ceiling on the amount of land that could be owned by individuals. The 1975 law included an amendment to extend this restriction to publicly held companies.³ One of the effects of this land reform was to give the State more than 20 hectares of land, ostensibly to increase productivity and employment. Successive governments took steps to transfer State lands to the people through permits and grants under various schemes. It is reported that over 8,000 square kilometers of Crown lands were distributed under the Land Development Ordinance (LDO) to the people by 1985, and close to 12,000 square kilometers of lands have been distributed under the Mahaweli Project and Presidential Task Force on Land Alienation since 1985.⁴

A. LAND LAWS IN SRI LANKA

Two sets of laws govern the land rights and ownership in Sri Lanka. One relates to “private” land, or land owned by private individuals or institutions. The other relates to land not owned by private individuals or private institutions, and is hence known as “State” land.⁵ There are also

¹ Refer to Crown Lands Ordinance No. 12 of 1840 and Crown Lands Encroachment Ordinance No. 9 of 1841.

² Refer to section 1 of the Crown Lands Ordinance No. 12 of 1840. This provision makes it clear that the person who occupies a land but who does not have a title to it or who has not cultivated, planted or otherwise improved and held uninterrupted possession of such land for the period of thirty years or more shall be directed to deliver up the said land to the Crown. [This Ordinance is now known as the Crown Lands Encroachment Ordinance, No. 9 of 1841]. It is said that “After the last King of Kandy was deposed, the British claimed on behalf of the Crown all forest and uncultivated lands and land not specifically granted to individuals. ... In order to strengthen the Crown’s claim of ownership the CLEO (Crown Lands Encroachment Ordinance) created a presumption of ownership in favor of the Crown in respect of forest, waste, unoccupied or uncultivated land.”

R.K.W. Goonesekere, *Select Laws on State Lands*, at p. 32.

³ Refer to Land Reform (Special Provisions) Act, No. 14 of 1986.

⁴ Land Watch Asia, *Land Ownership and the Road to Self-Determination, Sri Lanka Country Paper* at p. 223.

⁵ “... We, therefore, use the term Crown Land not as implying that such land vested in the Crown for the personal benefit of the Sovereign or even for the benefit of the Government, but as a convenient term to designate all land

some laws which relate to lands that were previously State lands and which became private or semi-private lands; similarly there are laws which relate to lands which were earlier private lands and which became State lands due to actions of the government.

Within the category of laws governing private lands, there are personal laws, such as Kandyan Law, Muslim Law and Thesawalamai, which are applicable to certain groups of people who satisfy certain defined territorial and/or personal requirements. At the same time there is common law, Roman Dutch Law, and Parliamentary laws, which govern these lands as well. This study is not primarily concerned with these laws, but instead concentrates on the issues relating to State lands and the problems faced by the people when dealing with officers and institutions relating to their expectations, interests, and rights over such lands.

With regard to State lands, there are many laws passed by the national legislature before and after independence, which apply. Some of them are: Waste Lands Ordinance, 1897; Land Development Ordinance, 1935; Crown Lands Ordinance, 1840; Crown Lands Encroachment Ordinance, 1841; State Lands Ordinance, 1947; Land Resumption Ordinance, 1887; Land Redemption Ordinance, 1942 and 1947; Land Settlement Ordinance, 1931; Sale of State Lands (Special Provisions) Law, 1973; State Land (Recovery of Possession) Act, 1979; Land Grants (Special Provisions) Act 1979; Land Acquisition Act, 1950; Land Reform Law, 1972 & 1975; Mahaweli Authority of Sri Lanka Act, 1979; National Environment Act, 1988; Prescription Ordinance, 1871; Thoroughfares Ordinance, 1861; National Thoroughfares Act, 2008; Forest Ordinance, 1907; Fauna & Flora Protection Ordinance, 1937; Local Authorities Laws (MC Ordinance, UC Ordinance, PS Act); and the 13th Amendment to the Constitution.

There are many institutions and authorities that deal with State lands. They can be identified as follows: The President; the Central Administration; Provincial Administrations; Land Commissioner General; Land Reform Commission; Provincial Land Commissioners; Land Settlement Commissioner; Registrar General; Title Registrar General; Government Agent (District Secretary); Divisional Secretary; Forest Conservator General; Mahaweli Authority; Sri Lanka Government Railway; Urban Development Authority; Road Development Authority; Ports Authority; Heads of Three Armed Forces; and the Board of Investment of Sri Lanka, among others.

State land is alienated under different schemes or programs, and under different laws to serve different purposes. The land alienation under the Land Development Ordinance takes the following broad categories:

- Village Expansion
- Regularization of Encroachments

which, not being vested in any individual, ought to be held by the Crown as trustee for the general community.” [Vide Third Report of the First Land Commission (1927-1929) as quoted by Goonesekere, R. K. W., in *Select Laws on State Lands*, at p.33. Refer to *Bulankulame v. Secretary, Ministry of Industrial Development* [2000] 3 Sri L R 243 wherein Amerasinghe J said: “The organs of State are guardians to whom the people have committed the care and preservation of the resources of the people. ... any question of the legal ownership of the natural resources of the State being vested in the Executive to be held in trust or used for the benefit of the people in terms of the Constitution is at least arguable. The Executive does have a significant role in resource management conferred by law, yet the management of natural resources has not been placed exclusively in the hands of the Executive. The exercise of Executive power is subject to judicial review.”

- Presidential Task Force on Land Alienation
- Major Settlements Schemes
- Middle Class Settlements Schemes
- Highland Settlements Schemes
- Youth Settlements Schemes

In terms of the Amendment Act passed in 1981, the Government is authorized to map out State land for the following purposes: village expansion; village forests; village pasture; village purposes; human re-settlement; protection of the sources or courses of streams; prevention of the erosion of the soil; forest reserves; government purposes, including government buildings, roads of works; reservations for climatic and other ecological purposes and environmental protection; preservation of objects of archaeological or historical interest; the requirements of local authorities; the development of towns; alienation to certain classes of persons; and any other purpose that may be prescribed, having regard to the protection, conservation and development needs of the area.⁶

Although the schemes referred to earlier have been operated by the authorities, there is no declared national policy on the criteria of these schemes and how the grantees or beneficiaries are selected. No national land use policy has been articulated to the public. It has been reported that the Ministry of Lands (MOL) is taking steps to establish a Land Bank with complete and comprehensive data of land use and ownership in Sri Lanka, so that it can facilitate the work of a National Land Commission once it is established.

B. LAND DISPUTES IN SRI LANKA

Disputes over use and possession of land have plagued Sri Lanka since independence and through out the 25 year civil conflict. Seven years after the end of the conflict land disputes are still rampant throughout Sri Lanka. Most disputes relate to State land or land not owned by private individuals. Many of these cases represent issues which arose due to the prolonged war as people who were issued permits or grants were forced to abandon those lands due to security and safety reasons.

Serious and protracted land disputes were identified throughout the targeted regions in the Eastern and Sabaragamuwa provinces, affecting over 6,000 families. The LAC program made considerable efforts to resolve these disputes, working with local authorities and communities, and through a series of provincial-level advocacy and discussion forums. Unresolved disputes were discussed at the national land forum in October 2016. While many of the disputes were or are being resolved, their background and context is important for understanding their policy origin and the need for national policy and institutional reform to resolve disputes in other regions and avoid future conflict. Further details for each case study is contained in Appendices A and B.

⁶ Refer to Section 6 of Land Development Ordinance, as amended by Act No. 16 of 1969.

I. Types of Land Disputes

There are two main types of land related disputes covered by the LAC Program in the Eastern and Sabaragamuwa Provinces. The first type is State land or land not owned by private individuals, and the second is the land that is held privately. Some of the land dispute cases represent issues which arose due to the prolonged civil war where people who were issued permits or grants were forced to abandon those lands due to security and safety reasons. In a majority of these cases, the land issues raised center around non-issuance of title documents, or demands for the payment of taxes for the title instruments to be issued to the people for the land claimed by them. In almost all of the cases, the lands that are the subject of these disputes are state lands which have been occupied by the people initially and later on either claimed or obtained documentation to regularize their right to stay there.

There are many vulnerable people living in Embilipitiya who do not have title to the land on which they have been living for many years, or in some cases, decades. Their forefathers lived on these lands before the Mahaweli Authority was set up by an Act of Parliament. While the necessity to establish the Mahaweli Authority and the massive scheme of Mahaweli diversification undertaken by the governmental agency is undisputed, and it is also true that many of the people and the country as a whole has benefited from these schemes, it is also true that many people have faced uncertainties and hardships with regard to their homes and farms.

Many hectares of land were declared by gazette to be the land of the Mahaweli Authority. People were living on many of these lands before these declarations were made, although they did not have the title deeds or written documentation to prove it. These lands were occupied by them and their parents even though the law then declared them to belong to the Crown. Even though the families did not have any title or deed to these lands, the land belongs to the people of the country. A legislative enactment claimed that the lands belong to the State.

In many cases, the people who were cultivating or residing in the state lands were given permits or grants to use those lands. But due to civil war and related threats, people had to leave. Some of those lands were taken over by the Security Forces, while some are occupied by those who “grabbed” the land. This grabbing represented a second case of encroachment; in certain cases there are multiple encroachments as well.

There are also cases where the Forest Department and other state institutions, such as the Divisional Secretariats, the Land Reform Commission, the Sri Lanka Government Railway, the

Title issues in Mahaweli Areas in Embilipitiya

In Embilipitiya, many people live in a “special area” declared by the Mahaweli Authority of Sri Lanka. These people claim that they are being required to pay very high taxes by the Mahaweli Authority on the basis of the current value of the lands rather than on the value at the time of their occupation of the property. The current value includes improvements to the property and in some cases may be as high as Rs. 800,000. These are too high for farmers and local people to afford. Since they cannot pay the tax they have not been given title to the land. This creates immense difficulties with regard to obtaining loans, gaining government school admissions for their children, etc.

When a provincial forum on this issue was conducted, representative of the Mahaweli Authority and the Chief Valuation Officer agreed that this type of valuation has caused injustice to the people. More than 2,000 people are affected by this issue and some of the affected claim that they and their ancestors were living in those areas before the Mahaweli Authority was established.

Urban Development Authority (UDA), the Ports Authority, and the Road Development Authority (RDA) have claimed some of these lands as coming under their purview and refuse to allow the people to go back to their homes.

In some cases individuals lost their lands when there were taken over by the RDA and UDA for their purposes. Similarly, the Board of Investment (BOI), and other institutions are taking steps to reclaim state lands which are being used by others. There are several instances where certain individuals have moved onto lands previously occupied for generations by others, and have refused to leave when the original occupants return.

Ullaikulam Land Issue in the Trincomalee District

There are claims and counter-claims from members of the Muslim community and Tamil indigenous community to the lands in question. Around 450 acres of land and 125 families are involved in this issue. The difficulties arose due to the civil war, when the then occupants or users of these lands abandoned the place as well as lost most of the documents of title such as permits, and grants under the Land Development Ordinance. The relevant office does not seem to possess the original documents and this has led to some tension and rift between two ethnic communities of the area.

When Focus Group Discussions were conducted by the Legal Officers of LAC with the concerned parties, there was no unequivocal evidence to say that these lands were occupied and used by members of one community to the exclusion of the other. The departmental records do not help in reaching a conclusion either.

In some of these cases, the disputes are multi-dimensional, involving ethnic or multi ethnic and/or religious issues. These disputes pose a threat to efforts to achieve reconciliation among various communities related to the protracted civil war.

2. Reasons for Disputes/Issues

One of the main causes of land dispute issues is the lack of available land for the growing population in these regions. Not enough land is available for people to own and farm, especially when 82% of the land in the country is owned by the State and its use not managed as efficiently as necessary. The public feels that they have an inherent right to obtain a share of land from the State for their living and livelihood. Another reason for land disputes is the failure of the government to review and revise the existing land related laws, and to formulate and implement land use planning. The

wide variety of ministries, departments, institutions, and authorities has resulted in overlapping responsibilities and issues relating to State land. Often these authorities work at cross purposes to the detriment of individuals seeking to own or retain property.

The lack of effective and timely delivery of justice by the courts and the authorities exacerbates the problem of land disputes. When encroachments occur, law enforcement authorities have not acted promptly to ensure protection for people and deal with the violators. This failure has resulted in many violations of land rights of the people and has led to many land related issues and disputes in the country. Authorities are not always timely informed or knowledgeable about these encroachments and therefore do not have an opportunity to respond to those cases. Even when authorities are aware of encroachments, they do not take action due to a variety of reasons, including those related to party politics, ethnic or religious discrimination, and/or corruption. The Secretaries and officers in relevant Divisional Secretariats, must uphold the rule of law as stated in Chapter 3 of the Constitution. It is this failure to protect individuals and to ensure timely and fair resolution to disputes that has led to many disputes in the country.

The present adversarial system of civil court proceedings is not only time consuming and costly, but also fails to settle most land dispute cases, causing division in and between communities, and protracted conflicts. The use of alternative dispute resolution mechanisms which have been shown in other countries to provide speedy resolution and amicable settlements between the parties is being tried by the Sri Lankan government in three pilot Special Mediation Boards in three districts of the country, under the provisions of the Mediation (Special Categories of Disputes) Act of 2003.

The Forest Department Officers (FDOs) have statutory authority to declare any land that is forest land or declared to be reserved, as a forest even though the land was the subject of grants or permits issued to individuals under the LDO. The officers do not take into account the fact that these lands were previously used for cultivation and that the war compelled people to leave those places or abandon cultivating them due to factors beyond their control. The Legal Officers of LAC report that the FDOs do not think it unreasonable to reserve these areas as forest and allow sand or gravel mining on them. The blanket authority granted to the FDOs is thus contributing to conflicts and the lack of available land for these needy populations.

There is also a failure on the part of the government officers to recognize the legitimate need for land and employment by the expanding population in these provinces. Strict interpretation of the laws, including those passed by the colonial government, is preventing efforts to redress the issues discussed in this study and to increase the availability of land for the poor.

Policy makers and legislators should also assume responsibility for issues that citizens are facing, in particular the poor and vulnerable people who are landless and who lost their property in the war. It is an opportune time for policy makers and lawmakers to carefully assess the desirability and suitability of continuing with colonial era laws which favored the outside investor and made it difficult for local citizens and the rural poor to acquire and develop land for their use. It is important to ask whether there has been any systematic study of existing land laws. A discussion on revising and updating land laws and policies to suit the present and future needs of the citizens of this country is therefore needed. The failure to update existing laws and address their impact on the lives of the people of this country undoubtedly has a role in the contentious land issues that have arisen.

C. RECOMMENDATIONS

1. The government should take steps to make a viable and desirable national land use policy through a consultative process. As for the making of the policy, the 13th Amendment to the Constitution requires a National Land Commission to be established by the Government, but it has yet to do so. The National Land Commission shall include representatives of all Provincial Councils. This is to deal with State land and it is the responsibility of the Commission to formulate the national policy with regard to the use of State land. The Commission shall lay down general norms for the use of land, with regard to soil, climate, rainfall, soil erosion, forest cover, environmental factors, economic viability, etc. The failure to set up such a Commission for almost 30 years is a constitutional breach on the part of the successive governments which came to power in the country since 1987. Unfortunately, the National Land Commission has still not been

appointed and it is the duty of the MOL to insist that the government organize the Commission as provided for in the 13th Constitutional Amendment.

2. The national policy formulated by the National Land Commission must be transparent and the government should provide the necessary legislative framework for its implementation. It is reported that the MOL is taking steps to establish a Land Bank, which will maintain comprehensive data on land. Technological steps are being taken to provide a data collection system that can facilitate land use policy planning and ensure transparency of the system. Recognizing its origin as Crown Land derived from the colonial period, the government should begin transferring full title and related rights of State land to the families and individuals that have demonstrative title.
3. The multiplicity of land related laws should be revisited and a comprehensive law to deal with all aspects of State lands should be introduced. The new law should streamline the process and agencies with authority over land. The wide variety of ministries, departments, institutions, and authorities have caused overlapping responsibilities and issues relating to State land, which should be avoided in the future. At times, it is evident that some of these authorities work at cross purposes.
4. The rule of law must be followed by all institutions, holding officers accountable for errors that they commit. Their errors and lapses, are at times, related to land and in some cases, result in ethnic or religious issues. When there is a dereliction of duty by officers, they should be disciplined. Wanton or careless actions or inactions on the part of the officers lead to many issues for society. The LAC has an important role to play in holding institutions and their local officers accountable for implementing policy and law. The LAC should provide training to its legal officers and technical support to its offices on how to resolve land disputes relating to disputes with government agencies.
5. The law relating to title registration should be implemented as soon as possible to avoid unnecessary problems that arise in the registration of documents system.
6. As part of the new land use policy, the Government should regulate and create incentives to ensure the more efficient use of land, especially given the population increase. There should also be proper planning to address environmental and wildlife protection.
7. The State officers should strike a balance between the needs of the people and the needs of the government. The people of this country have a right to expect that the State will provide them with adequate land for them to lead a decent life on their own. The State should maintain equilibrium between what is needed for people's use and what is needed for the nature's use, as well as what is needed for the present purposes and what is needed for the future generations.
8. The issues of the Forest Department divesting land for the forest reserve should be studied and a process developed for the Department to follow. A simpler and people sensitive process should be devised to deal with these issues that avoids delay and arbitrary decisions by State officers.
9. The number of Ministries and Departments dealing with land should be reviewed for overlap. The systems should be streamlined to avoid unnecessary problems for the public.

This should be considered carefully when Ministerial Portfolios are established and Departments are organized so as to avoid creating more bureaucratic hurdles for the public. There should be better coordination and cooperation among the different stakeholders.

- 10.** The government officers should help people resolve their issues. There were cases found that even where the officers recognized the administration had acted wrongly, they did not want to take steps or initiate measures to resolve the problem. Instead, they refer them to other places to obtain relief. For example, the offices of the District Secretary, Divisional Secretary and Grama Niladari should address issues affecting the people of that area and make representations to relevant offices in the central government or provincial administration to solve those problems rather than passing on the issues to others.
- 11.** The present adversarial system of civil court proceedings is not only time consuming and resource intensive, but also fails to settle most land dispute cases, causing bad social relations and division in communities. In this respect, alternative dispute resolution mechanisms may provide a speedy resolution and provide an amicable settlement between the parties. The government has already set up three pilot Special Mediation Boards under the provisions of the Mediation (Special Categories of Disputes) Act of 2003 in three districts of the country to deal with land related disputes. Although the Boards have not yet commenced operations, this is a favorable move which could be replicated with regard to land disputes in all the parts of the country.

APPENDIX A — CASE STUDIES IN THE EASTERN PROVINCE⁷

BATTICALOA DISTRICT

1. “Meeravodai” Land Issue

This dispute relates to a ‘State’ land of four acres and concerns around 29 people. The land was earlier administered by one Divisional Secretariat (DS) known as Koralai Pattru. However, this DS Division has been divided into three DS Divisions and this land now occupies the ‘borders’ of Valaichenai DS Division and Oddamavadi DS Division. The Valaichenai Divisional Secretary, however, has claimed that this land has been allotted to a school nearby. Neither the Muslim residents nor the Tamil residents have title documents for the land; but there had been a conflict between these two groups over this land. Although the boundaries of these two Divisions have been declared by gazette by the government, there is opposition to the present demarcation. As a result, the District Secretary of the Batticaloa district appointed a Committee to determine the boundaries of these two Divisional Secretaries Divisions. The Committee, though appointed in 2012, has not submitted its report yet and the boundaries are not yet defined as well.

2. Vedar Kudiyiruppu Land Issue (Kaatankudi-Aarayampathi Land Issue)

This issue relates to 21 acres of land within the Aarayampathy Divisional Secretary’s Division. The number of people affected is 46. The relevant DS claims that six acres of this disputed land is State land and that it has to be used for a public purpose. She has obtained an injunction against any activity over the land by any private individuals. However, there is a doubt as to whether the court’s injunction applies to the rest of the acres; due to this, construction of houses for the poor and vulnerable by an NGO is being significantly hindered. There is a need to survey the land and demarcate the relevant six acres which is claimed by the DS as belonging to the State and the balance should be released from the Court’s order so that people can construct their houses.

3. Muruthana Land Issue

This issue relates to a State land within the area of Koralaipattru South Divisional Secretary’s Division. Members of the Muslim and Tamil communities claim the right to occupy the 150 acres of land in question. According to the Legal Officer of LAC both groups seem to have been issued permits under LDO in the 1950s and 1960s. However, the possession of the land is now with members of one community. The boundaries of the lands are not marked and therefore, the problem could not be solved. An action has been filed in the relevant court of law, which ordered a survey of the land; resolution is pending results of the survey report. One group claims title to it as Muruthana land, whereas another group claims the title is to Kongilai land. However, the entire area is also generally known as Muruthana land, thus the confusion. The survey report submitted by the commissioned Surveyor does not resolve this issue. In the meantime, the Legal Officer of LAC took steps to convince the parties to accept a settlement and the DS has expressed a willingness to issue permits and settle the problem.

⁷ These case studies are conducted by Mr. M. M. Radheef Ahamed, and the accounts are drawn from his reports.

4. Thalaivai Land Issue

The land in issue is a 10 acre State land which has been 'leased' by the DS to a group of eight families who were affected by the war and left without any means of livelihood. However, some members of the neighboring area began encroaching on the land and claiming it as their own. These groups belong to two different communities, causing tension between them. Law enforcement officers have failed to prevent quiet possession of the land and stop the encroachers.

5. Kithul Land Issue

This is a 5 acre State land which has been given by the DS to 20 women for the purpose of home based cultivation. These women get financial assistance for the cultivation from an NGO. However, someone from a nearby town has tried to chase these women away and take over the land claiming it to be his. A police complaint has not brought any action from the authorities. However, the person who tried to remove these women has filed a court case which is now in revision at the High Court of Batticaloa. The Legal Officer of LAC could not do anything since a case is pending before a court of law.

6. Eravur Land Issue

This relates to the Muslim owners of lands who were compelled, through intimidation and duress, to part with their lands to the members of a Tamil community for a meagre sum paid by the then Liberation Tigers of Tamil Eelam or LTTE. The owners were compelled to execute deeds of transfer and those deeds were in the relevant registry. The former owners who could not stand up against the violent threats of the LTTE naturally feel that they lost their lands unreasonably and unjustly. They seek redress by a change of land policy to obtain justice. The land in question contains 1,450 acres and affects approximately 180 people.

TRINCOMALEE DISTRICT

7. Poonagar Land Issue [Panichankulam & Kallarippu]

According to the Legal Officer of LAC, people had resided on this site since 1956 and some obtained permits in 1962. However, they were displaced due to war and returned after four to five years. They were again displaced in 2006 and returned in 2009. But during the last displacement, the Forest Department demarcated those lands as forest, including a water tank known as Panichankulam. This tank is the only source of irrigation to the nearby lands. There seems to be some opposition by the FDOs for the public and irrigation authorities to reconstruct the tank, though this is not confirmed by the relevant DS. The public and irrigation authorities are not permitted to reconstruct the tank by the FDOs. The land at issue is 250 acres and around 120 families are affected.

8. Ullaikulam Land Issue

The lands in question are in Thopoor Iqbaal Nagar and Nalloor in Mutur in the Trincomalee District. The claimants are members of the Muslim community and Tamil community. According to the Legal Officer of LAC, the members of the Muslim community claim that they had been cultivating these lands since the 1950s and that they obtained permits in 1966. Some of them are holding valid permits and grants to these lands. However, they were compelled to leave due to the civil war. After the 2001 Ceasefire Agreement, they went back and cultivated the land.

There were again displaced in 2006 and returned in 2010. They are cultivating the land and applied for LDO permits in 2014.

In the meantime some members of the Tamil community [indigenous people] have complained to the DS that these lands belonged to them, having obtained them under the 1935 Scheme of D.S. Senanayaka Ullaikulam Tank. They, too, claim that they used the land for cultivation until 2006, when they fled due to war. They also claim they had financial difficulties and lent the land to Muslim people for cultivation. In some cases they sold their land for small amounts of money on the promise it would be returned upon repayment. Some of them claim that they have LDO permits.

Around 450 acres of land and 125 families are involved in this issue. The difficulties arose due to the civil war, when the then occupants or users of these lands abandoned the place and lost most of the documents of 'title' such as permits and grants under the LDO documents, which has led to tension between the two ethnic communities of the area. The focus group discussions conducted by the Legal Officer of LAC did not clarify ownership since neither the parties nor departmental records provided concrete evidence of ownership.

9. Selva Nagar Land Issue

The land in question is known as Thoppoor-Selva Nagar land situated in Nawatkerni Kadu GN area within the Seruwila DS Division. There are three villages: Selva Nagar, Neelakkerny and Nawatkenikkadu. The majority of residents in these areas are Muslims and they have been residing there for the last six decades. Their main complaint is that the Government proposes to acquire the entire village for archeological purposes, including the Seruwila Buddhist Temple. Around 127 families are affected by this move and the land includes 49 acres of paddy lands and residential structures. There are also actions by the Forest Department and Wild Life Conservation Department preventing these people from going into those lands. According to the Legal Officer of LAC, the affected parties feel that they should be compensated with alternate land for living and livelihood and that the acquisition should be done in a transparent and objective manner.

10. Thennamaravadi Land Issue

The dispute in the above case surrounds two issues relating to the village known as Thennamaravadi which falls within the Kuchaveli DS Division. The village has about 300 years of history and some people were issued grants during the British rule in the 1890s. The Land Kachcheri, which was held in 1975, selected 45 people for the issuance of permits, but after 1984 the villagers left due to civil war.

After the establishment of the Mahaweli "L" Scheme, many Sinhalese were settled in the nearby village called Sinhapura. These neighboring villagers did not permit the original villagers of Thennamaravadi to come back to their land when the civil war ended. It is also recorded that the Kuchaveli DS has issued LDO permits to 31 beneficiaries from Thennamaravadi village. There is also the issue of the Forest Department not permitting some of these permit holders to enter their lands. Landowners claim to have a valid deed for 68 acres of private land. These are also now under the control of the Forest Department. On the representations made by the Legal Officer of LAC, the representative of the Forest Department agreed to release the lands which are presently reserved as forest land, if the people produce valid title documents.

11. Fifteenth Distribution Channel Land Issue

The land in issue falls within the DS Division of Mutur and includes 600 acres. Around 450 people are affected by the issue. The people were displaced due to war and have been prevented from re-entering the land, which they had used for their farming and cultivation activities. Even as late as 2006, these people claim that they have been using the lands for their livelihood activities. After the final phase of the war in the East, they became displaced and when they returned in 2010 they were prevented from entering the land by FDOs who claim that some parts of the land are reserved forest, although they have given use of this land for sand yards.

The relevant DS stated that a Land Kacheri was held for considering the issue of permits and around 40% of the recipients have been identified with steps underway to issue the relevant permits.

12. Pulmottai 13th Mile Stone Land Issue

The land in issue had been used for cultivation since 1969 and the farmers hold valid documents to show the use of those lands. After 1983 they left the land due to civil disturbances and violence. The Legal Officer of LAC reports that during the ceasefire agreement period when the people went back to the lands, they were prevented by the Sri Lankan army and police from entering the land. However, in 2013 the Divisional Secretary of Kuchaveli Division granted permission to clear the land but the Forest Department authorities have stopped the people from clearing any of those lands. The extent of the land in issue is 180 acres and affects around 72 people. It is also reported that 20 acres are being forcefully encroached upon by a Buddhist monk who has built a Buddhist temple on two acres of this land. It is also reported that the land which is being encroached on by the monk is the subject of an LDO permit which was granted to another person who is unable to get the monk evicted from the place. His complaints to the authorities have failed to bring about any relief.

13. Pulmottai Land Issue

It is reported that the lands in issue have been used by the villagers since the 1950s. These places are known as Thondamurippu, Soothayankulam and Ottankulam. Some of them have permits issued in 1952, but because of the war they were prevented from entering these lands by the Sri Lankan Army. Although a majority of them do not possess title documents, a few have LDO permits to these lands. These were issued in 2013 by the Kuchaveli Divisional Secretariat. The Forest Department has also demarcated these lands as forest and the public was prevented by the Department from entering these lands as well. More than 400 acres of land have been reserved by the Forest Department as forest and more than 300 families are affected by this.

14. Thangapuram Land Issue

There are complaints that the lands in issue were earlier used by the public for chena cultivation with annual permits given by authorities. These individuals were displaced due to the war and when they returned they found the land to be used for gravel excavation. The Forest Department has prevented them from using the lands claiming that they are reserved forest. However, the people find that these lands are being used for gravel excavation under permits issued by the Department. Due to this mining, the soil is degraded and the area gets terribly polluted. It also causes severe threat of flooding during rainy seasons due to erosion. The extent of the land in issue is 80 acres and number of families affected is 130. It is also suspected that the permit

holders for gravel excavation go beyond the authorized areas and engage in excavation in other areas as well. Here again, the Additional District Forest Officer has agreed to release the lands to the people when they produce valid title documents supporting their claims.

15. Iruthayapuram Land Issue

This land falls within the area of the DS Division of Mutur. There are two main issues involved. One relates to a two acre area which has been used as a Hindu and Christian cemetery from the British period. Some private individuals are trying to encroach on this parcel of cemetery land by fencing it off and taking control of it. Complaints to the Mutur DS Secretary have not resolved this issue. The other issue relates to a 15 acre paddy land in the area which was taken over by the authorities for the construction of a highway to Samboor. Residents complain that the proper legal process was not followed and that they were not paid any compensation for their loss. Sand mining is also occurring in this area which is having severe impact on the paddy lands, including the threat of flooding. Complaints made to government officials have not yielded any favorable results. The number of people affected is 300.

16. Manalchenai Land Issue

According to the Legal Officer of LAC, the main problem in this case is the sand mining along the Mahaweli Ganga. Most of the paddy land has been badly affected and some other lands, which have been used for cultivation, are being used as sand yards. Since the war, the Forest Department has been preventing the people from entering or using these lands for cultivation, having reserved them as forest. However, according to the Legal Officer of LAC, sand miners are issued permits by the DS to use those lands as sand yards. Due to this, around 500 acres of land and 300 families are affected. Complaints made to the Government Agent (GA) of Trincomalee and DS of Mutur have not brought any relief. The GA has instructed the DS not to issue any more permits for sand mining in these areas. It is hoped that the decision will be effectively enforced.

17. Soodaikuda Land Issue

Residents of Soodaikuda were displaced due to the tsunami and when they wanted to return to their lands and paddy cultivation, they were denied permission by the Navy which has made that area a High Security Zone. Even though the Navy has released substantial acres of land in the recent past, they still hold 10 acres of land, which include areas that provided drinking water facilities. The people have to obtain permission to go into Soodaikuda to fetch water. Some of these people have deeds issued during the British period as far back as 1927. Some others are holders of Jayaboomi grants issued in 2004. Even though the Navy released lands in 2015 due to efforts at reconciliation, the people complained that the Police and Grama Niladari prevented them from entering the lands to clear them and cultivate them. The number of people affected is 160 and the extent of land is 345 acres. The people are requesting permission from the DS to undertake the clearing of the land and cultivating them for their livelihood.

APPENDIX B — CASE STUDIES IN THE SABARAGAMUWA PROVINCE⁸

EMBILIPITIYA

1. Henagegoda & Halwinna Land Issues

People have been living in this area for over 70 years. However, the land is claimed by the Forest Department as forest conservation land. Requests for title deeds have not met with any success, leaving people in difficult circumstances. With the intervention of the Legal Officer of LAC, the FDO has indicated that some of these lands fall outside the demarcated forest areas and that he would provide a list of land for which there has been clear usage for a considerable period of time to divest the title the Kolonna DS. This requires a mapping of the lands by the Survey General's Department before the lands to be divested are identified. Also the approval of the Inter Ministerial Committee will be required to transfer land between Ministries.

There was lack of clarity as to who constitutes this Committee and what their powers and role are. Although one of the Assistant DSs made a passing reference to the Committee granting approval to some requests, it was not fully explored. It was noted that the mechanism for divesting land from one Department to another is cumbersome and requires the involvement of the Surveyor General's Department and the Inter Ministerial Committee. The Additional DS agreed to raise this issue at the forthcoming District Agricultural Committee meeting and also have a discussion with the Officers of the Surveyor General's Department in Ratnapura.

A request was made to the Forest Department to release some land to widen the Halwinna Kosgahaulpatha Road from a foot path into a motorable road. The FDO referred to the national policy of increasing and conserving the number of forest lands in the area, but agreed to consider the request in light of many factors including the need for a wider road.

The Forest Department has overlapping issues with other institutions creating tension and controversies, such as the Wildlife Conservation Department. It was suggested that this problem did not occur when these two Departments were under one Ministry or Department in the past. However, when these Departments and roles were separated, issues have arisen in coordination.

2. Embilipitiya Land Issues with the Mahaweli Authority

Embilipitiya contains “special area” declared by the Mahaweli Authority of Sri Lanka. These people claim that they are being required to pay very high taxes by the Mahaweli Authority on the basis of the current value of the lands, which includes improvements, rather than at the time of their original occupation. According to the Legal Officer of LAC, in certain cases, the land parcels have been valued at more than Rs. 800,000. This means the taxes are beyond the resources of the farmers and people living there and they are unable to pay them. As a result, they are not issued the relevant title instruments, causing the people immense difficulties with regard to obtaining loans, gaining government school admissions to their children, etc. When a provincial forum on this issue was conducted, a representative of the Mahaweli Authority

⁸ These case studies are conducted by Mr. H. W. Rupasingha, and the accounts are drawn from his reports.

responded saying that the lands have to be valued with the improvements because this is a town area. However, after an open discussion about the hardships faced by the people, the Officer of the Mahaweli Authority and the Chief Valuation Officer agreed that this type of valuation has caused injustice to the people. Around 2,500 families are affected by this issue and some of the affected claim that they and their ancestors were living in those areas before the Mahaweli Authority was established.

If a policy decision can be made to reduce the rates to pre-development values, the occupants will make the tax payments and obtain title to the land. This is an urgent need for the residents, many who have lived here for almost four generations.

RATNAPURA

3. Helington Estate (Pambegama) Land Issues

People have been living in an area known as Helington Estate which is part of a State land called Pambegama. Generations of families have lived here but without any title documents for the land. The management of the Estate tried to evict these people from the land earlier; however the case was withdrawn due to other reasons. The relevant DS of the area requested a valuation so that he could take steps to grant the necessary titles. The Chief Valuation Officer had agreed to complete the valuation and issue the report to the DS in due course.

4. Forced Ouster of and Non-Payment of Compensation to People affected by Eheliyagoda Town Plan

The Eheliyagoda Town Expansion Plan carried out by the former administration saw forty houses and several buildings being razed to ground. The people affected were not paid any compensation and due process was not followed in the town expansion plan. While it was accepted that this process violated the rule of law and the rights of the people, the relevant DS was reluctant to take any affirmative action to secure relief for those affected. The officer responded with the practice of the Ministry about compensation and said she could not initiate the process even though the affected people had brought their grievances to her. She noted another incident where due process was followed in taking steps to widen a road, giving the Officer the authority to pay compensation for the victims. In the present case, the officer recommended taking this case to the Parliament Peoples Petition Committee.

5. Eheliyagoda Railway Houses (Land) Issue

Certain houses in Eheliyagoda, property of the Railway, have been occupied by sanitary workers for generations. However, they have been ordered to leave the houses immediately due to an upcoming town expansion program. Other land has been reserved for these people to move to and the National Housing Development Authority has provided a loan for them to build houses. However, the workers are reluctant to leave this current location due to inability to make loan payments and the new location is far away for them to travel for their work. The relevant DS declined to pay these workers any compensation for the loss of their dwelling on the basis that these workers are encroachers on State land. It was decided at the provincial forum to request that the Housing Development Authority provide them with houses.

6. Issues relating to lands held by Land Reform Commission : Kaella, Walakada, Nandanagama, Yowun Gammanaya

Kaella & Walakada – The land in issue is about 78 acres. The people have been living on this land for decades. During the time of the Southern Development Authority the land was subjected to mapping in 1991, but the relevant title documents were not issued to the people. However, the LRC claims title to these lands. The people on the land have paid the costs for the mapping believing they would get title. In some cases, documents certifying that the owners are eligible to receive title deeds were issued under the Land Grants (SP) Act, 1979. The representative of the LRC in Embilipitiya agreed to hold a mobile clinic to sort out these issues, which appear to have arisen due to a lack of awareness of the officer of previous events.

Nandanagama and Yowun Gammanaya - The land called Maduwanwella Nindagama in Nandanagama is over 100 acres and it was mapped in 2001 and 2006. The ownership certificates were issued in 2006, though these certificates are not title instruments. The LRC claims ownership of the land and has ordered the people to pay at the rate of Rs. 200 per perch if the title deeds are to be issued. Although some have paid this amount and received the deeds, the majority of the people are not willing to pay these excessive amounts.

The same situation applies in Yowun Gammanaya. The people received ownership certificates after having the land mapped, but they are not willing to pay what they consider to be excessive amounts to the LRC to obtain the proper title documents.

7. Palm Garden Estate & Dehenakanda Estate Land Issues

Under a special project of the Plantation Human Development Trust, people working in the estates were given around 5 perches per person along with a housing loan by the National Housing Development Authority. These lands are under the LRC, and only the Estate owners have management powers. The people have built houses and some have settled the loan. However, none of them have received any title document. At the provincial forum the Provincial Director of Estate Labor Congress clarified that the issues presented at the forum are common to the estate workers throughout the island in different degrees of complexity. It was decided to further discuss with the Plantation Trust and the LRC and thereafter to take it up at national level with all relevant stakeholders.

APPENDIX 3 – CHARTS OF LAND AND FAMILIES AFFECTED

Eastern Province: Batticaloa & Trincomalee

	Location of Land in Issue	Extent of Land in Issue	No. of Families affected
01	15 th Distribution Channel	600 Acres	450 Families
02	Iruthaya puram	02 Acres (Cemetery Land)	300 Families
03	Kithul	05 Acres	20 Families
04	Selvanagar	1049 Acres	380 Families
05	Soodaikuda	345 Acres	160 Families
06	Manalchenai	500 Acres	300 Families
07	Meeravodai	04 Acres	25 Families
08	Poonagar	250 Acres	120 Families
09	Pulmottai	400 Acres	300 Families
10	Thalaiva	10 Acres	08 Families
11	Tangapuram	80 Acres	130 Families
12	Thennamarawadi	130 Acres	460 Families
13	Muruthana	150 Acres	45 Families
14	Pulmottai 13 th Mile Post	180 Acres	72 Families
15	Vedar Kudiyiruppu	21 Acres	46 Families
16	Ullaikulam	450 Acres	125 Families
17	Eravoor	1450 Acres	183 Families

Sabaragamuwa Province: Embilipitiya & Ratnapura

	Location of Land in Issue	Institution involved in Issue	No. of Families affected
01	Eheliyagoda	LRC	100 Families
02	Eheliyagoda	CGR	25 Families
03	Eheliyagoda [Town Expansion]	DS	30 Families
04	Eheliyagoda [Town Expansion]	CGR	60 Families
05	Paragala Mukalana	Forest Dept.	25 Families
06	Moragaha Mukalana	Forest Dept.	30 Families
07	Iluktenna	Forest Dept.	11 Families
08	Helington Estate	Estate	30 Families
09	Henagegoda & Halwinna	Forest Dept.	175 Families
10	Kosgahaulpatha	Forest Dept.	50 Families
11	Embilipitiya	Mahaweli Authority	2419 Families
12	Walakada	LRC	50 Families
13	Kaella	LRC	50 Families
14	Nandanagama	LRC	60 Families
15	Yowun Gammanaya	LRC	40 Families
16	Palm Garden Estate	Estate	35 Families
17	Dehenakanda	Estate	40 Families